LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF SPECIAL OPERATIONS • SPECIAL INVESTIGATIONS DIVISION

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May 8, 1995

Captain Daniel Burt
Los Angeles County Sheriff's Department
Homicide Bureau
4700 Ramona Boulevard
Monterey Park, California 91754-2169

Dear Captain Burt:

Re: S.I.D. File No. 100-7917 / 95-0008
L.A.S.D. File No. **095-00473-0650-057**

The Special Investigations Division of the Los Angeles County District Attorney's Office has completed its review into the circumstances surrounding the nonfatal shooting of Jason Erik Schmaus by Los Angeles County Sheriff's Department **Deputy John Roberts on January 12, 1995**. Our investigation included a review of all reports prepared by the Los Angeles County Sheriff's Department received on February 23, 1995, reports prepared by our Bureau of Investigation, and a view of the scene of the shooting by Deputy District Attorney Susan Steinfeld and District Attorney Senior Investigators [redacted] and [redacted]. We have determined that the actions of Deputy Roberts were lawful and reasonable, and therefore decline criminal prosecution.

FACTUAL SUMMARY

The following summary is taken from written statements voluntarily prepared by the deputies involved as well as their voluntary statements given to Los Angeles Sheriff's Homicide Detectives Ron Bosket and Ray Rodriguez on January 12, 1995.

On January 12, 1995, Los Angeles Sheriff's Department Deputies John Roberts and Derrick Alfred were working a patrol assignment in the Canyon Country area of northern Los Angeles County. Both deputies were in full uniform and driving in a marked patrol car.

At approximately 3:30 a.m., Deputies Roberts and Alfred observed a white Ford 4x4 extended cab pick-up truck. The truck was parked in the middle of the street on

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Jake's Way with its emergency lights flashing. They approached the unoccupied truck and noticed that the ignition appeared to be "punched," that is, the steering column was broken with a towel wrapped around it and it had a scratched and elongated keyhole. Deputies Roberts and Alfred decided to take up a position of surveillance and wait to see if anyone approached the pick-up. Shortly thereafter, a male (later identified as Jason Schmaus) walked to the truck, entered the driver's side and started the engine. As the pick-up began to drive off, Deputy Roberts followed Schmaus in the patrol car. Schmaus drove the vehicle over the curb onto a dirt field which ran along side Jake's Way. The deputies illuminated the pick-up with their spotlight and ordered Schmaus to stop the truck.

Schmaus continued driving through the field and up a small incline leading to the Metrolink railroad tracks. The field was completely saturated with water from recent heavy rains and consisted of thick mud and sparse brush. Also, there were no lights in the field, whatsoever. The truck drove along side the railroad tracks for a short period and the deputies drove parallel to it along the road. The truck then drove down the hill, lost its front left tire and became stuck in the mud. The deputies got out of their car and approached the truck on foot. They shouted for Schmaus to get out of the pick-up. The truck lurched forward and Schmaus drove it through an access tunnel under the railroad tracks. Both deputies continued to pursue Schmaus on foot, with Deputy Roberts leading the way. As Schmaus cleared the tunnel, his truck once again got stuck in the mud. Deputy Roberts yelled for Schmaus to get out of the pick-up and walked toward him. Schmaus was able to rock the truck back and forth and dislodge it. Schmaus drove the vehicle in reverse a short distance before it became stuck a third time. Deputy Roberts, believing the pick-up was finally disabled, approached the pick-up with his gun drawn and ordered Schmaus out of the truck. Schmaus continued to accelerate the engine. As Deputy Roberts neared the front left portion of the truck, the truck suddenly became free and proceeded directly at Deputy Roberts. Deputy Roberts, fearing the truck was about to run him over, fired his service weapon in self-defense. As he fired the weapon, he stepped to his right to avoid being struck by the truck.

Deputy Alfred attempted to safely approach the truck, but could not do so because of the erratic driving. He observed Schmaus try to strike Deputy Roberts with the truck but could not fire his weapon for fear of a "cross-fire situation" (ie., the possibility of inadvertently injuring Deputy Roberts instead of the suspect.)

Deputy Kevin Lavo responded to a dispatch by Deputies Roberts and Alfred that they were in foot pursuit of a suspect. In his report, he wrote, "[b]y the time I reached the field I saw the suspect's vehicle again stuck in the mud and was attempting to break free by racing the engine. During this time Deputy Roberts was in front of the suspects' vehicle pointing his weapon at the vehicle and ordering the

suspect to stop and exit the vehicle. The suspect continued racing the engine and refused to obey Dep. Robert's orders. The suspect's vehicle broke free and was heading directly at Dep. Roberts who backed up and then fired at the suspect and the vehicle that was headed right at him. Dep. Roberts continued to move out of the way while firing, until the vehicle came to a stop."

The pick-up had a screwdriver inserted in its ignition, a common tool used to operate a vehicle with a punched ignition. The truck had two bullet holes in the front windshield on the driver's side, one bullet hole in the windwing on the driver's door, and four bullet holes in the center of the driver's door. Schmaus sustained gunshot wounds to his left thumb, thighs, scrotum and lower back.

The Ford pick-up was a stolen vehicle. It had been reported stolen on November 9, 1994, and also had been reported as being involved in a series of residential burglaries occurring in the West Valley area of Los Angeles County.

Jason Schmaus was charged by the Los Angeles County District Attorney's Office with the following allegations: one count of assault on a peace officer with a deadly weapon, one count of unlawful taking or driving a motor vehicle and one count of evading a peace officer with reckless driving (Superior Court Case Number PA019050). The matter is scheduled for trial on May 5, 1995 in Department C of the San Fernando Superior Court. Schmaus was on [redacted]

LEGAL ANALYSIS

In protecting himself or another, a person may use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. California Jury Instructions--Criminal (CALJIC) 5.30 and 5.32.

If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. Actual danger is not necessary to justify the use of deadly force in self-defense. The right of self-defense is the same whether the danger is real or merely apparent. People v. Toledo (1948) 85 Cal. App. 2d 577.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of

hindsight. . . . The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments--in circumstances that are tense, uncertain, and rapidly evolving--about the amount of force that is necessary in a particular situation." Graham v. Conner (1989) 490 U. S. 386, 396-397, 104 L. Ed. 2d 443, 109 S. Ct. 1865.

In the present case, Deputies Roberts and Alfred were confronted with an individual who immediately fled upon being followed by the deputies. He drove erratically and recklessly, endangering himself as well as the deputies. He failed to obey a number of commands to stop and get out of the truck. When he turned and accelerated the vehicle directly toward Deputy Roberts, Roberts logically and rationally believed that his life was in jeopardy. The firing of his weapon in self-defense was both lawful and reasonable under these circumstances.

Accordingly, we will take no further action in this matter. Our file is now closed.

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District Attorney

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By Susan F. Stein

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c. Deputy John Roberts #[redacted]